

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
MEMPHIS

CURTIS L. BYRD, JR.,

Plaintiff,

vs.

LESLIE I. BALLIN, et al.,

Defendants.

X
X
X
X
X
X
X
X
X
X
X

No. 04-2998-D/P


ORDER DENYING DEFENDANT BALLIN'S MOTION TO DISMISS
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT BALLIN

Plaintiff Curtis L. Byrd, Jr. commenced this action by filing a legal malpractice complaint in the Shelby County Circuit Court, docket number CT-005216-04, on September 13, 2004 against defendant Leslie I. Ballin, an attorney who represented Byrd in a federal criminal prosecution arising out of this district. See Notice of Removal, Ex. A. On or about November 15, 2004, plaintiff filed an amended complaint that, for the first time, added the National Bank of Commerce ("NBC") and three individuals, Sheila Burnett, Latoria Johnson, and Patricia Cook, as defendants. See Notice of Removal, Ex. B. The claims against NBC arose under, inter alia, the Right to Financial Privacy Act, 12 U.S.C. § 3401 et seq., and Tennessee law. NBC was served with the amended complaint on November 19, 2004 and removed this action to federal court, pursuant to 28 U.S.C. § 1446(d), on December 9, 2004.

On December 13, 2004, plaintiff filed a motion seeking summary judgment with respect to his claim against defendant Ballin. Defendant Ballin, through counsel, filed two documents, which the Court construed as a response to the summary judgment motion, on January 13, 2005. Plaintiff filed a reply in further support of his summary judgment motion on January 18, 2005. The Court issued an order on February 4, 2005 denying the plaintiff's motion.

The docket sheet for this case lists defendant Ballin's January 13, 2005 filing as a separate motion, rather than as a response to the plaintiff's December 13, 2004 motion. This construction is supported by the fact that Ballin filed a motion and supporting memorandum on January 13, 2005. As the Court has denied plaintiff's motion for summary judgment, this motion (if it is, in fact, a separate motion) is DENIED as moot.

IT IS SO ORDERED this 22. day of December, 2005.


BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 82 in case 2:04-CV-02998 was distributed by fax, mail, or direct printing on December 27, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT